IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Kunji Vs. State of Raj.
(D.B. Criminal Appeal No.543/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 17-7-2001 in Sessions Case No.78/1997 passed by Sh. Ram Singh Meena, Additional Sessions Judge Dholpur.

Date of Judgment: July 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Anil Jain, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Kunji, (appellant herein) and his two minor sons were named as accused in the FIR lodged on September 1, 1997. Charges under sections 302/34, 341/34 and 323/34 IPC however could not be established against minor sons and learned Juvenile Court acquitted them. Appellant was however found guilty under sections 302/34 and 323 IPC and learned Additional Sessions Judge Dholpur convicted and sentenced him. In this back drop, following question emerges for our consideration:-

> "Whether a person could be convicted of aiding and abetting an offence even though other offenders had been acquitted on the same evidence in another trial?"

2. Gangadhar (since deceased) Kunji (appellant), Rammu (PW.3) and Charan Singh were real brothers. On September 1, 1997 at 10 AM while Gangadhar and Rammu had been ploughing the field jointly owned by four brothers, Kunji, and his three sons viz. Panna Lal, Niroti and Dhan Singh came to the field and asked Ganga Dhar and Rammu to leave the field. After hot exchanges Kunji and his three sons allegedly inflicted lathi blows on the person of Rammu and Gangadhar. Parcha Bayan (Ex.P.6) of Rammu got recorded and case under sections 447 and 323 IPC was registered against the appellant and his sons and investigation commenced. In the course of investigation injured Gangadhar died and section 302 IPC came to be added. On completion of investigation charge sheet was filed against the appellant. Since co-accused Panna Lal and Niroti were juvenile they were indicted before the Juvenile Court. Learned Additional Sessions Judge Dholpur framed charges under sections 323 and 302/34 IPC against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 15 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above. Co-accused Panna Lal and Niroti however stood acquitted by the Juvenile Court.

3. Having pondered over the rival submissions and on weighing the record we noticed that co-accused Panna Lal and Niroti were charged before the Juvenile Court under sections 302/34, 323/34 and 341/34 IPC. The same witnesses who were examined before the Juvenile Court testified against the appellant in the trial court. On one hand Juvenile Court gave benefit of doubt to Panna Lal and Niroti and observed that they did not conjointly acted, the learned Judge who found the appellant guilty held that the

appellant had shared common intention with the co-accused in committing the crime. On the same set of evidence two inconsistent opinions are before us and we have to consider whether an accused could be convicted of aiding and abetting an offence even though other offenders had been acquitted on the same evidence in another trial.

4. We find answer to this legal question in Krishna Govind Patil Vs. State of Maharashtra (AIR 1963 SC 1413) wherein four Hon'ble Judges of the Supreme Court indicated that where three of the four accused charged for the offence under section 302 read with 34 IPC had been given benefit of doubt, the fourth accused under the same charge that he had committed the offence along with other accused could not have been convicted. It was observed in para 8 as under:-

> "But the present case falls outside the said three illustrations. The High Court gave conflicting findings. While it acquitted accused 1,3 and 4 under Section 302 read with Section 34 of the Indian Penal Code, it convicted accused 2 under Section 302, read with Section 34, of the said Code, for having committed the offence jointly with the acquitted persons. That is a legally impossible position. When accused were acquitted either on the ground that the evidence was not acceptable or by giving benefit of doubt to them, the result in law would be the same; it would mean that they did not take part in the offence. The effect of the acquittal of accused 1, 3 and 4 is that they did not conjointly act with accused 2 in committing the murder. If they did not act conjointly with accused 2, accused 2 could not have acted conjointly with them. Realizing this mutually destructive findings of the High Court, learned counsel for the State attempted to sustain the finding of the High Court by persuading us to hold that if the said finding was read in the context of the whole judgment, it would be clear that the learned Judges meant to hold that persons other than the acquitted accused conjointly acted with the convicted accused. We have gone through the entire judgment carefully with the learned counsel. But the observations of the learned Judges as regards the "other participants" in the crime must in the context refer only to the "one or other of the said three acquitted accused participated in the offence committed by the accused". There is not a single observation in the judgment to indicate that persons other than the said accused participated in the offence, nor is there any evidence in that regard. We, therefore, hold that the judgment of the

> High Court cannot stand. We are satisfied that on the findings arrived at by the High Court, the conviction of accused 2 is clearly wrong."
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> (Emhasis supplied)

5. Even otherwise Section 34 IPC could not have been invoked in the instant matter since the land was in joint possession of four brothers and the appellant had bonafide right to prevent his two brothers viz. Rammu and Gangadhar from ploughing the land. On a close appraisal of the testimony of Rammu (PW.3) we find that free fight ensured between the members of family and it could not be established that it was the appellant who was responsible for the injuries sustained by the deceased and informant Rammu. In our considered opinion charge under section 302/34 and 323 IPC could not be established against the appellant beyond a reasonable doubt.

6. For these reasons, we allow the appeal and set aside the impugned judgment dated July 17, 2001 of learned Additional Sessions Judge Dholpur. We acquit the appellant of the charges under sections 323 and 302/34 IPC. The appellant Kunji, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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